

FCC Telecom Enforcement

Remarks of David H. Solomon, Chief, FCC Enforcement Bureau
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Thank you. Today I'm going to talk about some of the key areas where you're particularly likely to see telecom enforcement activity during the next year. To a significant extent, it is harder to talk about what's coming down the pike for the Enforcement Bureau than for the rulemaking bureaus. I can't point to dozens of open rulemaking proceedings and tell you when they're likely to be decided. Also, because our proceedings involve the rights of specific parties, it's harder for me to speculate about where the Commission might be headed on specific matters.

Nevertheless, I can and will give you a sense of likely "hot" telecom enforcement topics for the coming year. Keep in mind, though, that often the most significant enforcement actions during any given year are things we didn't know about at the beginning of the year. We pride ourselves on our adaptability and our ability to re-focus resources on emerging compliance problems. I also want to provide you with some guidance on dealing with the FCC on enforcement issues.

Universal Service Enforcement

Let me start with universal service enforcement. We have become much more active in this area in the last year or so and this is going to continue to be a major enforcement area. Our universal service enforcement efforts are focused on four different categories: payment issues, Lifelink/Linkup outreach, schools and libraries and high cost.

Our Investigations and Hearings Division has been working very closely with the Wireline Competition Bureau and the Universal Service Administrative Company to identify companies that haven't been paying into the fund or have been seriously delinquent in their payments. Following up on an \$800,000 NAL issued in 2003, during 2004, the Bureau entered into consent decrees with six carriers for either not paying or paying late. More significant than the voluntary payments into the Treasury in lieu of a penalty, the companies paid or agreed to pay about \$20 million into the fund. We have about 50 investigations pending and we have already identified companies that will be the subject of additional investigations to be opened soon. I'm quite confident that we will have more enforcement actions in this area in the coming year.

So if you have clients who aren't living up to their payment obligations, my advice is that you get them to pay promptly. While they may not be able to avoid enforcement action by getting the matter resolved now, they certainly will be better off than if they let it linger until we show up on their doorstep.

On Lifeline/Linkup outreach, about a year or so ago, representatives of Indian tribes met with us to express concern that certain carriers were doing no or virtually no outreach on tribal lands, in violation of FCC rules requiring reasonable outreach for these programs. We've recently taken two enforcement actions in this area, including a recent consent decree with Qwest involving several tribes in various states. Qwest agreed to make a \$250,000 payment to the Treasury in lieu of a penalty and to spend at least \$200,000 in outreach to tribes regarding the availability of Lifeline and Linkup. We have other investigations pending where additional action may be forthcoming in the next few months. Lifeline and Linkup are particularly important in tribal areas, with their high poverty rates and low levels of telephone penetration. Certainly our hope and expectation here is that carriers have gotten the message and will improve their tribal outreach efforts. To the extent that's not the case, we'll be ready.

On Schools and Libraries enforcement, we've debarred three people for fraud and have suspended one more person, with a debarment proceeding against that person pending. We also have before us the Commission's first request for a waiver of the debarment rules, filed by NEC. The Department of Justice entered into a plea agreement with NEC in which NEC pled guilty to fraud and a bid rigging conspiracy. NEC then filed a request for a waiver of the Commission's debarment rules. DOJ submitted comments saying that denying the waiver would harm its ability to take strong action against fraud and abuse in the Schools and Libraries program. The House Commerce Committee leadership weighed in against the waiver request. I anticipate that this case will be decided by the Commission in the next few months.

We are also conducting a small number of audits of carriers participating in the High Cost Support Program. We are looking at whether they may be claiming support for which they are not entitled. It's too early to tell at this point, but these audits may lead to enforcement action and could also lead to us to make some recommendations to the Wireline Competition Bureau regarding possible rule changes.

Consumer Protection Enforcement

Consumer protection enforcement remains at the core of what the Enforcement Bureau does, so you can expect us to continue to be extremely active in this area.

We will continue to focus on Do-Not-Call enforcement as our top consumer protection enforcement priority. These are very important pro-consumer rules. In general, the rules seem to be working well. Consumers are getting far fewer intrusive marketing calls. But we are being vigilant to ensure compliance. As the Chairman has said more broadly, effectiveness of statutory and rule requirements depends on the Commission's commitment to take swift and decisive enforcement action where warranted.

FCC jurisdiction in this area is broader than FTC jurisdiction and, in order to avoid duplication of effort, we are focusing our enforcement efforts on areas outside the

FTC's jurisdiction – common carriers, financial institutions, insurance companies, airlines and intrastate telemarketers.

Since the rules became effective last fall, the special Do-Not-Call Enforcement Team in our Telecommunications Consumers Division has initiated 95 national Do-Not-Call investigations. With respect to carriers, we had a \$400,000 consent decree with Primus regarding the national rules. In addition, we had a \$490,000 consent decree with AT&T, largely regarding the company-specific Do-Not-Call rules. With respect to non-carriers, we've issued 16 citations under the statutory provision that requires a citation for a first violation by a non-FCC regulated entity. We are tracking post-citation complaints carefully to see if follow-up forfeiture proceedings are appropriate. We have at least one post-citation investigation pending that may well lead to a significant enforcement action.

Another set of consumer-oriented rules that generally seem to be working very well are the wireless local number portability rules that went into effect about a year ago. EB has tracked complaints closely. In July, we had a \$100,000 consent decree with a LEC regarding failure to route calls to ported numbers. We have had some other investigations that did not lead to enforcement action. To the extent any violations arise in the future, we will certainly pursue them.

Slamming and cramming will also continue to be important priorities. We've had about \$1.5 million in slamming enforcement so far this year, including a half million dollar forfeiture and, just this week, a half million dollar consent decree. Also this week, we issued a half million dollar consent decree with AT&T regarding cramming. In addition, we have a major slamming matter likely to come out in the next couple of months.

We also intend to continue to actively enforce the Telephone Consumer Protection Act bans on unsolicited commercial faxes and recorded commercial telephone messages. We've issued 28 junk fax citations and six recorded message citations so far this year. If the Commission gets additional complaints against such companies, we will move to forfeiture proceedings. In this regard, we recently issued another junk fax Notice of Apparent Liability proposing a forfeiture and we have a likely recorded message NAL in the works.

Finally with regard to consumer protection, we will continue to follow closely wireless E911 implementation. These are critical public safety rules for consumers. While we are not seeing the kind of problems that led to millions of dollars in enforcement actions in prior years, this remains a high priority area for us. In this regard, we recently issued a \$50,000 NAL against Sprint PCS regarding failure to timely respond to two requests for E911 service from public safety entities.

Competition Enforcement

Another major telecom area I want to discuss is competition enforcement.

As a general matter, our recent experience has been that competition disputes are often very fact-intensive and can involve legal provisions where the answers aren't entirely clear. As a result, we are finding that these cases tend to fall into the category of agency-sponsored dispute resolution – through mediation or the formal complaint process – rather than FCC investigation and a forfeiture proceeding or a consent decree.

We have three particularly interesting pending formal complaint proceedings relating to local competition disputes. *AT&T v. Bell South*, which has a statutory deadline of next week, involves a claim by AT&T that two Bell South special access discount plans discriminate in favor of Bell South's long distance subsidiary and are otherwise anti-competitive and unreasonable, in violation of sections 201, 202 and 272. Two other pending formal local competition complaints of particular note are *New South v. Bell South*, which involves the time period for converting special access lines to enhanced extended loops (so-called EELs), and *Earth Link v. SBC*, which involves an allegation by an Internet Service Provider that SBC improperly cross-subsidized its unregulated retail Internet service with profits earned from allegedly unreasonably high pricing of its regulated wholesale DSL service.

Let me come back for a moment to the statutory deadline that I mentioned. Complaints concerning the lawfulness of tariff provisions are subject to a five month statutory deadline. In addition, section 271 "backsliding" complaints are subject to a 90-day deadline. The Commission regularly meets these statutory deadlines, so particularly in these areas, the formal complaint process can be a powerful tool to get a prompt decision.

Our Market Disputes Resolution Division has also been very active – and successful – in mediating competition disputes. Examples of significant or interesting issue where we've helped parties settle this year or are involved in pending mediations include the following: (1) a dispute between a wireless carrier and 19 ILECs regarding reciprocal compensation; (2) a dispute between a CLEC and an ILEC regarding collocation of switching equipment; (3) a dispute between an ISP and an ILEC regarding Computer III requirements; and (4) a dispute between an IXC and 62 ILCEs regarding preferred carrier change procedures. The list could go on and on.

While this mediation work doesn't get public attention, it does get results, and we will continue to devote resources to this area.

Now, turning to an area where we do get public attention, we certainly do stand ready to investigate local competition violations and take strong enforcement action through forfeitures or consent decrees when appropriate. Earlier this year, the Commission issued a \$9 million proposed forfeiture against Qwest (which Qwest paid) for failing to file interconnection agreements with state commissions as required by

section 252. This case, combined with the D.C. Circuit's affirmance of the \$6 million forfeiture against SBC for violations of the shared transport provisions of the SBC/Ameritech merger order make clear the Commission is prepared to act strongly when faced with clear violations of our competition requirements.

We also had two enforcement actions this year growing out of the joint federal-state section 272 audit program regarding the requirements for the BOCs' long distance affiliates. Additional audit cycles are underway or in preparation for each of the BOCs and these could lead to additional enforcement action, depending on the results.

Numbering Enforcement

A final telecom area where you're likely to see enforcement actions is numbering. We have about a dozen open investigations regarding whether carriers properly filed forecasts for their numbering resource requirements in each rate center and properly returned to the number administrator unused number blocks. We have worked closely with Neustar, the numbering administrator, to identify carriers to investigate.

We also initiated this year a small number of random audits to ascertain compliance with the numbering rules. Our staff will oversee the work of independent auditors and will review and analyze the independent auditors' conclusions. The audits will document the carriers' policies and procedures for complying with Commission rules and guidelines concerning the utilization of numbering resources, including assignment of numbers, aging of numbers and submission of utilization information to the pooling administrator.

Dealing with the FCC on Enforcement Matters

Let me turn now to some suggestions about how to deal with the Enforcement Bureau. Probably the key thing you should know about the Enforcement Bureau -- if you don't know it already -- is that we focus our attention on the law and the facts, not on rhetoric. So when you get a letter of inquiry from us, it is important that you provide a full and accurate response to our factual questions. At the same time, even if we don't ask, if you have legal or policy arguments you want to make about why you acted lawfully or why we shouldn't take enforcement action, you should feel free to provide such arguments to us in writing as part of your response to the LOI. While you can certainly wait until we issue an NAL to give us these arguments, it's not necessarily in your interest to do so. And, from our perspective, if there are good legal or policy reasons why we shouldn't move forward, we certainly would rather know them sooner rather than later. In this regard, I should note that not all investigations lead to enforcement action; we close plenty of them based on the response we receive. So a full response can help you. If that's not enough of an incentive, I should point out that we have issued forfeitures against some companies for failure to respond fully to our inquiry letters and we will not hesitate to do so in the future where appropriate.

Once we get a response to an LOI, if we have additional questions, we may send a supplemental LOI. But if we feel the record is sufficient, we won't be back in touch with you before deciding what to do. That is, we're not likely to call you up on our own and tell you we're about to issue an NAL and ask if there's anything else you'd like to say beforehand. So if you've answered an LOI, and there's more you want to tell us, or you want to discuss a possible consent decree, it is incumbent upon you to get in touch with us. Also, it's perfectly fine for you to check in from time to time to try to find out what's happening. We might not tell you with the level of detail you want but if you listen, you can usually get a pretty good sense of things. For example, if we say we're moving forward, you can make a pretty good guess that in fact we're moving forward toward enforcement action.

Let me close with a few examples of what not to do, based on real examples from the past year. Some of you may have heard me stress in previous presentations the rather self-evident point that it's important to get the facts right and tell the truth. But if you are going to get the facts wrong, trust me the time to do it is **not** when you are talking with the Chairman or Commissioners or their staffs about why they should disagree with the Bureau. The Eighth Floor does not exist in a vacuum, and the first thing they typically do after talking with you is check in with us. And if what you tell them is disproved by your own written filings, you are, to say the least, not helping your cause.

I've also said in the past that it's generally not a good idea to come in and say that the Bureau or the Commission is a bunch of idiots. While again I thought this was rather self-evident, recent experience suggests that this is apparently not the case. But if, no matter what I suggest, you are going to come in and say we're idiots, you might want at least to do it in the context of a request for something constructive that can help you rather than just part of a gratuitous screed.

To sum up, you can expect the FCC to continue to be active in a variety of telecom enforcement areas – in particular, universal service, numbering, consumer protection and competition.

Thank you and I'd be happy to take some questions.